

REMARKS

In response to the above-identified Final Office Action ("Action"), Applicants traverse the Patent Office's rejection of the claims and seek reconsideration thereof. Claims 1-28, 115-122, 127, 128, 132 and 133 are rejected. In this response, claim 1 is amended, claims 29-114, 123-126, 129-131 and 134-137 are cancelled and no claims are added. Claims 1-28, 115-122, 127, 128, 132 and 133 remain in the Application.

I. Claim Amendments

Claim 1 is amended to include the elements of a "*catheter proximal section having a length greater than that of the catheter distal section*", a tendon disposed within a first lumen of said catheter shaft, said first lumen being approximately *centrally located within said catheter shaft along an entire length of* said catheter proximal section...*said tendon being able to deflect said catheter distal section when being pulled on without modifying a length of the catheter shaft*" (emphasis added). Support for the amendments to claim 1 may be found, for example, on page 14, paragraph [0068] of the Application and Figures 1 and 2. Applicants respectfully submit the amendments are supported by the specification and do not add new matter. Applicants therefore respectfully request consideration and entry of the amendments to claim 1.

II. Claim Rejections – 35 U.S.C. §102

In the Action, claim 1 is rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,456,667 issued to Ham et al. ("Ham"). Applicants respectfully traverse the rejection.

It is axiomatic to a finding of anticipation that each and every element of the rejected claim be found within a single prior art reference.

Although Applicants disagree with the Patent Office's grounds for rejecting claim 1 for at least the reasons discussed in the Response to Office Action dated February 2, 2009 and Response to Final Office Action dated June 12, 2009, Applicants have amended claim 1 to

include additional elements not disclosed by the prior art in an effort to expedite prosecution of the Application.

In this regard, Applicants respectfully submit that Ham fails to disclose at least the elements of a “*catheter proximal section having a length greater than that of the catheter distal section*, a tendon disposed within a first lumen of said catheter shaft, said first lumen being approximately *centrally located within said catheter shaft along an entire length of said catheter proximal section...said tendon being able to deflect said catheter distal section when being pulled on without modifying a length of the catheter shaft*” (emphasis added) as recited in amended claim 1.

Ham describes a catheter with a shaft 11 having an expandable region 12 formed of a tubular material that continues to the distal end of the catheter. See Ham, Abstract. Specifically, Ham discloses a catheter having “an expandable region 12 beginning at the distal end of the catheter body and continuing the catheter body in a one-piece configuration.” See Ham, col. 5, lines 12-15. The distal portion is defined by Ham as extending from side port 21 in sidewall 22 of tubular catheter body 11 to port 23. See Ham, col. 5, lines 23-25. Ham further discloses that expansion of expandable region 12 is controlled by tendon 13.

The Patent Office alleges that “Ham discloses...a catheter shaft (internal compartment 26 or 11) with a proximal section (bottom) and distal (top), a tendon (13) disposed within a first lumen (internal area of 17) which is approximately centrally located at the proximal section (note lumen position is central as it approaches near 44) and at the distal end the lumen is off center (note lumen position is off center as it approaches near top area and numeral 17)...” and “...deflection of the distal end by the tendon (compare figure 1 to 1a).” See Action, pages 2-3.

The first lumen (internal area of 17) which the Patent Office alleges is approximately centrally located at the proximal section (as it approaches near 44), however, is not centrally located along an entire length of a proximal section having a length greater than that of the catheter distal section as required by claim 1. Rather, as can be seen from Figure 1 of Ham, the alleged tendon 13 is centrally located along a region of shaft 11 which has a length less than that of the alleged shaft distal end. Thus, Ham fails to disclose a *catheter proximal section having a*

length greater than that of the catheter distal section, a tendon disposed within a first lumen of said catheter shaft, said first lumen being approximately *centrally located within said catheter shaft along an entire length of* said catheter proximal section as required by claim 1.

In addition, the Patent Office alleges that the expansion of the expandable region 12 discloses deflecting of the catheter distal section. Expansion of region 12, however, causes an axial spacing between ends 14 and 15 of expandable region 12 to change. This in turn, changes a length of the alleged catheter shaft 11. See, for example, Figures 1 and 1a of Ham. Thus, for at least the foregoing reasons, Ham does not disclose a tendon being able to deflect a catheter distal section when being pulled on *without modifying a length of the catheter shaft* as recited in claim 1.

Since, for at least the foregoing reasons, Ham fails to teach each and every element of claim 1, claim 1 is not anticipated by the cited prior art reference. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §102 over Ham.

III. Claim Rejections – 35 U.S.C. §103

A. In the outstanding Action, claims 2-21 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,123,699 issued to Webster, Jr. ("Webster") in view of Ham. Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness, the Patent Office must set forth "some articulated reasoning with some rational underpinning to support the conclusion of obviousness." See KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385, 1396 (2007). In combining prior art elements to render the claimed combination of elements obvious, the Patent Office must show that the results would have been predictable to one of ordinary skill in the art. See Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103, Section III(D), issued by the U.S. Patent and Trademark Office on October 10, 2007.

Claims 2-21 depend from claim 1 and incorporates the limitations thereof. Thus, for at least the reasons previously discussed, Ham fails to disclose at least the elements of "catheter proximal section having a length greater than that of the catheter distal section, a tendon disposed

within a first lumen of said catheter shaft, said first lumen being approximately centrally located within said catheter shaft along an entire length of said catheter proximal section...said tendon being able to deflect said catheter distal section when being pulled on without modifying a length of the catheter shaft” as incorporated into claims 2-21 from claim 1. The Patent Office has further not pointed to, and Applicants are unable to discern, a portion of Webster curing the deficiencies of Ham with respect to each of these elements. Accordingly, the proposed combination of Webster and Ham does not teach or suggest all of the claim limitations of claims 2-21. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2-21 under 35 U.S.C. §103 in view of Webster and Ham.

B. In the outstanding Action, claims 22-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Webster in view of Ham in further view of U.S. Patent No. 6,254,598 issued to Edwards et al. (“Edwards”). Applicants respectfully traverse the rejection.

Claims 22-28 depend from claim 1 and incorporate the limitations thereof. Applicants respectfully submit that for at least the reasons previously discussed, the proposed combination of Webster, Ham and Edwards does not disclose or render predictable each of the elements of claims 22-28. In particular, Edwards does not cure the deficiencies of Webster and Ham with respect to the elements of a “catheter proximal section having a length greater than that of the catheter distal section, a tendon disposed within a first lumen of said catheter shaft, said first lumen being approximately centrally located within said catheter shaft along an entire length of said catheter proximal section...said tendon being able to deflect said catheter distal section when being pulled on without modifying a length of the catheter shaft” as incorporated into claims 22-28 from claim 1. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 22-28 under 35 U.S.C. §103 in view of Webster, Ham and Edwards.

C. In the outstanding Action, claims 115-122, 127-128, 132 and 133 are rejected under 35 U.S.C. §103(a) as being unpatentable over Webster in view of Ham in further view of Edwards and in further view of U.S. Patent No. 6,770,070 issued to Balbierz (“Balbierz”). Applicants respectfully traverse the rejection.

Claims 115-122, 127-128, 132 and 133 depend from claim 1 and incorporate the limitations thereof. Applicants respectfully submit that for at least the reasons previously discussed, the proposed combination of Webster, Ham, Edwards, and Balbierz does not disclose or render predictable each of the elements of claims 115-122, 127-128, 132 and 133. In particular, Balbierz does not cure the deficiencies of Webster, Ham and Edwards with respect to the elements of “catheter proximal section having a length greater than that of the catheter distal section, a tendon disposed within a first lumen of said catheter shaft, said first lumen being approximately centrally located within said catheter shaft along an entire length of said catheter proximal section...said tendon being able to deflect said catheter distal section when being pulled on without modifying a length of the catheter shaft” as incorporated into claims 115-122, 127-128, 132 and 133 from claim 1. Applicants respectfully request reconsideration and withdrawal of the rejection of claims 115-122, 127-128, 132 and 133 under 35 U.S.C. §103 in view of Webster, Ham, Edwards, and Balbierz.

CONCLUSION

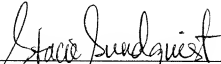
In view of the foregoing, it is believed that all claims now pending, namely claims 1-28, 115-122, 127, 128, 132 and 133, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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Dated: December 1, 2009

By: _____


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December 1, 2009



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